



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,019	11/30/2001	Andrew Joseph Keogh	063511/9043	4717

23409 7590 03/28/2003

MICHAEL BEST & FRIEDRICH, LLP  
100 E WISCONSIN AVENUE  
MILWAUKEE, WI 53202

[REDACTED] EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	8

DATE MAILED: 03/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/889,019</b>	Applicant(s) <b>Keogh</b>	
Examiner <b>Lien Tran</b>	Art Unit <b>1761</b>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on Jul 10, 2001
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.
- 4)  Claim(s) 23-47 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 23-47 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some\* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7      6)  Other:

Art Unit: 1761

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers

have been placed of record in the file.

2. Claims 23,34-35,36 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

In claim 23, the use of the term " soft" is indefinite because it is not known what will be

considered as soft; the term is relative. Lines 1-2 are indefinite. Lines 1-2 recite a process for

producing a "set expanded foodstuff" by passing a "soft expanded foodstuff"; in this recitation,

the foodstuff is already expanded before the process begins. It is not clear what is being claimed.

In claims 34-35, the term " soft" has the same problem as claim 23.

Claim 35 is vague and indefinite because it is not clear what is being claimed. Is the formation of

the ball during the extrusion? It is not clear what is being formed during the heating to the first

temperature.

In claim 36, the term " soft" has the same problem as in claim 23.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country, or on sale in this country, more than one year prior to the date of application for

4. Claims 23,24,28,31-34,36-38,42,45-47 are rejected unde

anticipated by Keller.

Art Unit: 1761

Keller discloses a method for producing expanded farinaceous food product. The method comprises the steps of forming a food composition containing water, passing the composition through an extruder having a pressure equal to or in excess of the vapor pressure of water in the mixture and a temperature of at least 121 degree C and extruding the composition through a profile die into a zone of ambient pressure below the vapor pressure of the water in the mixture. As the extrudate emerges from the die into the zone of reduced pressure, a portion of the water in the mixture is vaporized thereby causing the product to expand. The food composition can have low, to moderate to high degree of sweetness. The food composition emerges from the die into a zone of ambient pressure below the vapor pressure of the water in the mixture, that is normal atmospheric pressure. As it emerges from the die, the extrudate has a temperature from about 121-163 degree C and is soft. The product is subjected to cooling and cooled to near ambient temperature in about two minutes. (See columns 2-6)

Keller discloses the same method as claimed. The food composition is passed from a region having higher pressure and temperature into a region of lower pressure and temperature. The food is expanded by reduction in pressure and the water is vaporized. The first temperature falls within the range claimed. The food composition is subjected to a forming procedure by passing through the profile die to form pieces such as corn puffs, cookie-like pieces. The food composition is a confectionery because it contains sugar.

Art Unit: 1761

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 25,26,27,39,40,41 rejected under 35 U.S.C. 103(a) as being unpatentable over

Keller in view of Bisson et al .

Keller does not disclose the first and second pressure at claimed and the second temperature as claimed.

Bisson et al disclose a method of making puffed product in which the food is passed from high pressure and temperature to lower pressure and temperature environment to cause puffing.  
(See col. 3 lines 1-35)

Art Unit: 1761

In absence of showing of unexpected result or criticality, the pressure used in forming the product varies with respect to the ingredients contained in the food composition and the type of equipment used. This is evident through the teaching of Keller and Bisson et al. It would have been obvious to one skilled in the art to use the pressure which will accomplish the objective of expanding the food product depending on the product made and the type of equipment used. The determination of appropriate pressure to obtain the most optimum expansion would have been within the skill of one in the art through routine experimentation. The pressure claimed is conventional as shown by Bisson. Keller discloses the product is cooled to ambient temperature; thus, it is obvious the temperature will fall within the range of 10-50 degree C because ambient temperature normally is about 20-30 degree C.

8. Claims 30 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller in view of Forkner.

Keller does not disclose a chemical expanding agent in the food composition.

Forkner discloses expanded confections. He teaches to add chemical expanding agent to aid in the expansion. (See col. 6 lines 45-50)

It would have been obvious to add a chemical expanding agent as taught by Forkner in the Keller composition to aid in the expansion of the food product.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Holay et al disclose a method for manufacturing crisp rice.

Art Unit: 1761

Spicer discloses expanded food product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

March 23, 2003

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
Group 1700